

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
CIVIL ACTION NO. 85-0489-RGS

UNITED STATES OF AMERICA,

v.

METROPOLITAN DISTRICT COMMISSION, et al.,

CIVIL ACTION NO. 83-1614-RGS

CONSERVATION LAW FOUNDATION OF NEW ENGLAND, INC.

v.

METROPOLITAN DISTRICT COMMISSION

SCHEDULE SEVEN COMPLIANCE ORDER NUMBER 227

April 8, 2013

STEARNS, D.J.

This is the two hundred and twenty-seventh Compliance Order that has issued in this litigation. On March 14, 2013, the Massachusetts Water Resources Authority (MWRA) filed its Quarterly Compliance and Progress Report. The United States and the Conservation Law Foundation have each indicated that they decline to file a response.

I. Schedule Seven

There were no scheduled activities on Schedule Seven for the last quarter.

II. Progress Report

1. Combined Sewer Overflow (CSO) Program

a. CSO Annual Progress Report

The MWRA has submitted its CSO Annual Progress Report 2012 (Annual Report). The Annual Report documents the significant progress the MWRA has made towards the completion of its long-term CSO control plan. Over the course of 2012, the MWRA spent \$42.4 million to implement CSO projects and work performed by the Boston Water and Sewer Commission (BWSC), the Town of Brookline, and the City of Cambridge. The MWRA's spending in 2012 brought its total capital expenditure for the CSO control program to \$818.1 million.

The MWRA has now completed 29 of the 35 projects in its long-term CSO control plan, with even better than anticipated results. CSO discharges have been effectively eliminated at 37 of the 84 CSO outfalls. The MWRA has achieved an 85-percent reduction in average annual CSO discharge volume since 1988, a reduction from a yearly 3.3 billion gallons to now 500 million gallons annually. Some 88 percent of the remaining CSO is treated at one of the MWRA's four CSO facilities prior to being discharged.

b. CAM004 Stormwater Outfall and Detention Basin

The MWRA reports that construction of the CAM004 stormwater outfall and wetland detention basin in Cambridge is now approximately 90 percent complete, and remains on schedule to be completed by the end of this month. The City of Cambridge and Verizon have worked cooperatively on relocating utility lines, allowing the City to proceed with installation of the remaining stormwater outfall conduit along Wheeler Street. The construction of the pedestrian overlook at the Oxbow site is now completed, as is the installation of pedestrian boardwalks in the basin area. The contractor is currently grading a multi-use path that will be

incorporated into a bikeway being built by the Massachusetts Highway Department. This summer, Cambridge will restore the ground surfaces adjacent to the basin area, and complete the recreational and environmental education components envisioned by the Department of Conservation and Recreation's (DCR) Alewife Brook Reservation Master Plan.

c. Brookline Sewer Separation

The Town of Brookline is progressing steadily on the second (and last) contract that will bring its sewer separation project to completion.¹ This second project, which involves installing 3,790 linear feet of storm drain and 5,840 linear feet of sanitary sewer, is now 95 percent complete. The special structures that connect the new town sewers to the existing Brookline lateral sewers and the MWRA's interceptor system are now operating.

The MWRA additionally reports that Brookline's contractor is in the final stages of cleaning the combined sewers that were converted to storm drains, and installing a new 8-inch sewer main – the last pipeline installation in this project – along St. Mary's Street, to provide service to Boston University's 15 St. Mary's Street building. The current Beacon Street/St. Mary's Street combined sewer is being converted to a storm drain to allow separated stormwater to be redirected from the MWRA's system to the Charles River through Outfall MWR010. According to the MWRA, Brookline anticipates substantial completion of the project by July of 2013, in compliance with Schedule Seven.

d. Reserved Channel Sewer Separation

According to the MWRA, the BWSC continues to make design and construction progress on the remaining contracts that comprise the Reserved Channel sewer separation project. The

¹ The first contract was completed in January of 2010.

two remaining sewer separation contracts - 3B (which involves sewer separation over a span of 66 acres, and is now 50 percent complete) and 4 (which involves sewer separation over 182 acres, and is now 25 percent complete), are on schedule. The remaining projects – Contract 8 (for pavement restoration), Contract 5 (for cleaning and lining of existing sewers), and Contract 6 (for downspout disconnections) are in various stages of work and design/bidding. All work on this project should be completed by December of 2015, in compliance with Schedule Seven.

e. CAM004 Sewer Separation

The MWRA reports that the City of Cambridge continues to make progress on its three construction projects, with the anticipation of meeting the December 2015 milestone. As noted in a previous compliance review report, City had expressed concern about its ability to reach the milestone as scheduled, but has since expedited the work after several successful meetings with the MWRA discussing further collaboration.

The design of Contract 8B, which includes the installation of new sanitary sewers and storm drains in Huron Avenue (and along several intersecting streets), is now 90 percent complete. According to the MWRA, Cambridge plans to advertise the contract this month and to begin construction in July of 2013.

In January of 2012, Cambridge initiated the design of Contract 9, which includes the installation of new sanitary sewers and storm drains in Concord Avenue (and intersecting streets). The MWRA reports that Cambridge plans to begin construction in January of 2014, with substantial completion slated for December of 2015. Although the community meeting process is ongoing, the MWRA warns that the schedule may be possibly be complicated by bidding anomalies, utility conflicts, and/or unexpectedly severe weather.

The third contract, Contract 8A, which includes the separation of approximately 20,700 linear feet of sanitary sewer and storm drain pipe in the Huron Avenue-Fresh Pond-Brattle Street vicinity, is progressing. The City's contractor has relocated utilities and water mains at several locations, and has begun the installation of the sewer and storm drain pipes. The sewer separation work is scheduled to be completed in May of 2014, with the completion of surface restoration work to follow in December of 2014.

The MWRA has provided a further briefing on its discussions with Cambridge over the revised cost estimates submitted by the City in October of 2012. The MWRA reports that its cost share for the Alewife Brook projects may increase from \$60 million to \$87.1 million (the MWRA notes that Cambridge's costs have also increased significantly). On March 13, 2013, the MWRA's Board of Directors approved a \$17.3 million increase in the award to Cambridge, to permit the advertising of Contract 8B, which is necessary to insure compliance with Schedule Seven. Cambridge will also furnish design information and cost estimates for Contract 9.

f. Control Gate and Floatables Control at Outfall MWR003 and MWRA Rindge Avenue Siphon Relief and Interceptor Connection Relief and Floatables Control at Outfall SOM01A

The preliminary design services and reports are being completed for these two projects, which are intended to ensure sufficient hydraulic capacity for overflow at outfall MWR003 in large storms, and to increase the size of the local sewer connection to the MWRA's interceptor system at outfall SOM01A. These are the last two of six projects that comprise the Alewife Brook CSO plan.

The MWRA's design consultant produced the revised 100 percent design submission on March 8, 2013. A hearing before the Cambridge Conservation Commission is scheduled for

today, April 8, 2013, and the MWRA reports that it has received a preliminary response from DCR on its application for construction permits. The consultant's alternative hydraulic model evaluations for the MWR003/Rindge Avenue siphon project have been completed, and the consultant will submit the draft preliminary design report later this month.

III. Comments

The court is especially pleased with the sustained progress achieved on all fronts in the past quarter and the commitment that the MWRA and its partners have made to bring this massive public improvements project to a successful, timely, and cost-effective conclusion. The increasing costs of the Alewife Brook CSO projects remain a concern; the Court encourages the MWRA and the City of Cambridge to continue their efforts to contain these to the extent practicable.

ORDER

The parties are ordered to report to the court as previously scheduled.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE